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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,759	05/02/2001	Mark J. Hall	HANDEV.002RA	6043

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EXAMINER

GIBSON, ROBERT W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/847,759

Applicant(s)

Hall

Examiner

Atkinson

Group/Art Unit

3634

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/3/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20, 22-24, 26-37, 39, 49-62 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 1-19, 62 is/are allowed.
- ☒ Claim(s) 20, 22-24, 26-37, 39, 49-61 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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1. If additional defects or errors are corrected in the reissue after the filing of the application and the original reissue oath or declaration, a supplemental reissue oath/declaration must be filed, unless all additional errors corrected are spelling, grammar, typographical, editorial or clerical errors which are not errors under 35 U.S.C. 251 (see MPEP § 1402). In other words, a supplemental oath/declaration is required where any "error" under 35 U.S.C. 251 has been corrected and the error was not identified in the original reissue oath/declaration.

The supplemental reissue oath/declaration must state that every error which was corrected in the reissue application not covered by the prior oath(s)/declaration(s) submitted in the application arose without any deceptive intention on the part of the applicant.

2. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-20, 22-24, 26-37, 39, and 49-62 are rejected as being based upon a defective declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above in paragraph 1.

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Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

3. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 30-37, 39, 53-54, and 57-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 30, line 13 "the rear portion" has no antecedent.

In claim 36, line 13 "the rear portion" has no antecedent.

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In claim 53, line 8 "the front rod-like member" has no antecedent.

In claim 54, lines 10-11 "the at least one other rod-like member" has no antecedent.

In claim 57, line 9 "the plurality of cans" has no antecedent, and the claim should end in a period (.).

In claim 58, line 3 "the rear portion" has no antecedent.

6. The drawings are objected to as failing to show every feature of the claimed invention, as required by 37 C.F.R. 1.83(a). In that regard, the drawings do not show the following claimed features:

- a) In claim 24, line 1 "threaded fasteners",
- b) In claim 30, line 2 "a substantially horizontal shelf",
- c) In claim 31, lines 1-2 "the shelf is adjustably mounted",
- d) In claim 32, lines 1-2 "the rack is narrower than the shelf",
- e) In claim 33, lines 1-2 "a clearance is defined between a lower surface of the shelf and an upper surface of the support assembly",
- f) In claim 34, line 3 "the clearance",

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- g) In claim 35, line 1-2 "threaded fasteners",
- h) In claim 51, line 1 "fasteners",
- I) In claim 52, line 2 "apertures",
- j) In claim 57, lines 9 and 10 "first and second apertures" (both occurrences), and in lines 17 and 18 "third and fourth apertures" (both occurrences),
- k) In claim 58, lines 1 and 3 "the third and fourth apertures" (both occurrences),
- l) In claim 59, lines 1-2 "the fasteners are threaded fasteners",
- m) In claim 60, line 2 "the apertures",
- n) In claim 61, line 2 "the apertures".

Because these features are not shown in the drawings, and are not referred to specifically in the specification as well, they are, therefore, inadequately disclosed.

7. Claims 24, 30-35, 51, 52, and 57-61 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See the above objections to the disclosure.

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8. Claims 20, 22-24, 26-37, 39, 49-52, and 54-61 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed **subject matter surrendered in the application** for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to **subject matter that applicants previously surrendered** during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent **was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered** in the application for the patent cannot be recaptured by the filing of the present reissue application.

In this regard, original patent claim 1 recites:

"In one of a cooler, visi-cooler, walk-in cooler and glass-door cooler having fixed or adjustable shelves, the improvement comprising;"

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original patent claim 5 recites:

"wherein the framework comprises further rod-like members extending from one end at the stop to an opposite end that is rearward of a rearward most one of the at least one other rod-like member." 7

and original patent claim 14 recites: 1

"further comprising members on the front and other rod-like members for fixing the framework under another structure."

A review of the application file (09/015,595) for original patent No. 6,044,983, upon which this reissue application is based, reveals that original application claims 4, 8, and 17 were amended to overcome a prior art rejection (Office Action Paper No. 6, March 18, 1999), with the above three noted claim limitations making application claims 4, 8, and 17 allowable over the prior art of record. Original application claims 4, 8, and 17 subsequently issued as independent patent claims 1, 5, and 14, respectively. As a result, these omitted limitations relate to subject matter previously surrendered by applicants, and impermissible recapture exists. Thus, any claim in reissue must include these elements.

9. Claims 1-19, and 62 are allowed.


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10. Claim 53 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Gibson, Jr. whose telephone number is (703) 308-2168.

rwg

October 18, 2002


ROBERT W. GIBSON, JR.
PRIMARY EXAMINER
ART UNIT 3634